UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-2203
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF OMID KORDESTANI
SAN FRANCISCO, CALIFORNIA
THURSDAY, FEBRUARY 12, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR
JOB NO. 16382

FEBRUARY 12, 2009

9:33 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF OMID KORDESTANI, at SHEARMAN & STERLING, 525 Market Street, 15th Floor, San Francisco California pursuant to notice, before me, ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR, CSR License No. 9830.

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

JENNER & BLOCK, LLP

By: SUSAN J. KOHLMANN, Esq.

ERIC HAREN, Esq.

919 Third Avenue, 27th Floor

New York, New York 10022-3908

(212) 891-1690 skohlmann@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.:

MAYER BROWN, LLP

By: JOHN MANCINI, Esq.

1675 Broadway

New York, New York 10019

(212) 506-2146 jmancini@mayer.com

WILSON SONSINI GOODRICH & ROSATI

By: CAROLINE WILSON, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 320-4741 cwilson@wsgr.com

A P P E A R A N C E S: (Continued.)

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
By: BENJAMIN GLADSTON, Esq.
12481 High Bluff Drive, Suite 300
San Diego, California 92130-3188
(858) 720-3188 beng@blbglaw.com

ALSO PRESENT: Adam Barea, Google, Inc.
Kelly Truelove, Consultant
Lou Meadows, Videographer.

---oOo---

KORDESTANI

SAN FRANCISCO, CALIFORNIA

THURSDAY, FEBRUARY 12, 2009, 9:33 A.M.

09:34:16 THE VIDEOGRAPHER: On the record.

09:34:17 This is today's videotaped deposition of
09:34:22 Omid Kordestani, taken on February 12, 2009, at
09:34:28 Shearman & Sterling, 525 Market Street, 15th Floor, in
09:34:32 San Francisco, California. In the matter of Viacom
09:34:32 International, Inc., vs. YouTube, Inc., and The
09:34:32 Football Premier -- excuse me -- The Football
09:34:32 Association Premier League Limited, et al., vs.
09:34:44 YouTube, Inc., et al.

09:34:44 Case No. 07-CV-2103 and 07-CV-3582, in the
09:34:52 United States District Court, for the Southern
09:34:54 District of New York.

09:34:55 My name is Lou Meadows, and I represent
09:34:59 David-Feldman Worldwide. Located at 600 Anton
09:35:05 Boulevard, Suite 1100, in Costa Mesa, California.

09:35:07 We are now commencing at 9:33 a.m.

09:35:09 Will all present please identify themselves
09:35:13 and state whom you represent.

09:35:13 MS. KOHLMANN: Susan Kohlmann from Jenner &
09:35:18 Block, representing the Viacom plaintiffs.

09:35:20 MR. HAREN: Eric Haren from Jenner & Block,
09:35:21 representing the Viacom plaintiffs.
09:35:21 MR. GALDSTON: Benjamin Galdston of Bernstein
09:35:24 Litowitz, representing the Premier League and Class
09:35:28 plaintiffs.
09:35:28 MR. TRUELOVE: Kelly Truelove, consultants
09:35:29 for Viacom plaintiffs.
09:35:30 MR. MANCINI: John Mancini, Mayer Brown,
09:35:33 counsel for defendants Google and YouTube.
09:35:40 MS. WILSON: Caroline Wilson from Wilson
09:35:41 Sonsini, counsel for defendants Google and YouTube.
09:35:41 MR. BAREA: Adam Barea, Google, Inc.
09:35:44 THE VIDEOGRAPHER: Thank you.
09:35:45 We are getting a little bit of BlackBerry
09:35:49 transmission. Somebody forgot.
09:35:51 And will the court reporter please administer
09:35:52 the oath. Thank you.
09:35:52
09:35:52 OMID KORDESTANI,
09:35:53 having been sworn as a witness, testified as follows:
09:35:53
09:36:07 EXAMINATION BY MS. KOHLMANN
09:36:07 MS. KOHLMANN: Q. Good morning,
09:36:09 Mr. Kordestani.

09:43:46 Q 1999.

09:43:47 And were you vice president of business development when you left Netscape in 1999?

09:43:53 A Yes.

09:43:53 Q And when you left Netscape, where did you go?

09:43:57 A Google.

09:43:58 Q Okay. Now, Mr. Kordestani, you're Google's business founder; are you not?

09:44:07 A It's a --

09:44:07 MR. MANCINI: Objection to form.

09:44:09 THE WITNESS: It's a title that they've affectionately given me.

09:44:13 MS. KOHLMANN: Q. It's on their website --

09:44:16 A Right.

09:44:16 Q -- isn't it, on your bio --

09:44:16 A Yes.

09:44:18 Q -- correct?

09:44:18 So as Google's business founder, what did -- what did you do to earn that title? Why did they call you that?

09:44:27 A I was the first business executive, business employee and responsible for building Google's business operations.

09:44:32 Q In fact, they say you developed and

09:44:35 implemented the company's initial business model;
09:44:38 isn't that right?
09:44:39 A Yes.
09:44:39 Q Okay. What was the company's initial
09:44:41 business model?
09:44:42 A Licensing our search services and
09:44:51 advertising, search advertising.
09:44:53 Q Can you explain to me what you mean by
09:44:56 licensing your search services?
09:44:59 A We power search for companies, corporations,
09:45:03 and the other websites.
09:45:07 Q Okay. And the other part of the business
09:45:10 model that you developed and implemented was search
09:45:13 advertising; is that what you said?
09:45:15 A Yes.
09:45:15 Q So can you explain what search -- what you
09:45:18 mean by "search advertising"?
09:45:20 A It's related to advertise on search terms and
09:45:26 targets, advertising to users search queries.
09:45:38 Q So correct me if I'm wrong, did you say it's
09:45:44 the ability to advertise on search terms and targets?
09:45:48 A And target advertising to users' queries,
09:45:50 search queries.
09:45:52 Q Okay. Okay.

09:45:55 So -- and that was the company's initial
09:46:00 business model; is that correct?
09:46:02 A Yes.
09:46:02 Q And has that business model changed over
09:46:08 time?
09:46:08 MR. MANCINI: Objection; vague.
09:46:10 THE WITNESS: What do you mean by that?
09:46:11 MS. KOHLMANN: Q. What's the business model
09:46:12 today? Is it different?
09:46:13 A It's primary advertising still today.
09:46:15 Q Search advertising?
09:46:17 A Yes.
09:46:17 Q Advertising where -- on -- on the same --
09:46:23 with the same criteria, targeting, targeted
09:46:27 advertising with search terms?
09:46:30 MR. MANCINI: Objection; vague.
09:46:31 THE WITNESS: The question is? What is the
09:46:32 question again?
09:46:32 MS. KOHLMANN: Q. What is the business model
09:46:34 today? And how is it different?
09:46:36 A Majority of our revenue is still from search
09:46:38 advertising.
09:46:41 Q And has the way in which the revenue from
09:46:45 searches is derived changed at all from when you

09:46:48 initially created the -- the Google business model?

09:46:52 MR. MANCINI: Objection to form.

09:46:53 THE WITNESS: Has the way -- what do you mean

09:46:55 by that?

09:46:56 MS. KOHLMANN: Q. Are -- are there different

09:46:57 ways in which the advertising gets done and you

09:46:59 rec- -- you monetize value?

09:47:02 MR. MANCINI: Objection to form.

09:47:03 THE WITNESS: Algorithms and underlying

09:47:10 technology has evolved.

09:47:12 MS. KOHLMANN: Q. And how has it evolved?

09:47:16 A More sophisticated in the way we target

09:47:18 advertising, paying attention to quality of ads.

09:47:25 Q And in the time from when you arrived at

09:47:29 Google and today, the company acquired DoubleClick;

09:47:35 didn't it?

09:47:36 A Yes.

09:47:36 Q And DoubleClick has certain capabilities to

09:47:39 enhance the targeting of ads; doesn't it?

09:47:42 MR. MANCINI: Objection; lacks foundation.

09:47:43 THE WITNESS: Could you clarify the question?

09:47:47 MS. KOHLMANN: Q. Why don't you tell me what

09:47:49 DoubleClick added to the equation.

09:47:50 MR. MANCINI: Objection to form.

KORDESTANI

MS. KOHLMANN: You can answer.

THE WITNESS: DoubleClick provides an advertising platform that helps both advertisers and publishers manage their advertising campaigns and advertising yield from their properties better.

MS. KOHLMANN: Q. How does it enable advertisers to manage the advertising yield from their properties better?

A It -- it -- it -- they have a suit of products for both advertisers and publishers that helps them manage their advertising campaigns online.

Q We'll come back to DoubleClick.

So in 1999, when you started at Google, what was your title?

A It would be vice president of sales and business development.

Q And what were your duties and responsibilities?

A Establishing all the revenue operations and customer relationships, partnerships.

Q And did there come a point in time when your title changed?

A I -- I was promoted to senior vice president.

Q Do you know when that was?

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09:49:10 A Don't remember the exact date.

09:49:11 Q Okay. Any other titles that you've held while at Google?

09:49:15 A The title may have slightly changed to sales and operations, but it's basically worldwide sales and operations and business development.

09:49:19 Q Okay. Setting aside the titles --

09:49:22 A Yeah.

09:49:29 Q -- for a moment, how has your job changed over the course of the last ten years?

09:49:31 MR. MANCINI: Objection to form.

09:49:37 THE WITNESS: Could you clarify the question?

09:49:38 MS. KOHLMANN: Q. Well, do you do today what you did in 1999?

09:49:40 A Pretty much.

09:49:41 Q Are there any added responsibilities since you started with the company in 1999?

09:49:44 A The company has got larger operations, have become larger, but the fundamental job is the same.

09:49:45 Q Do you get involved in, for example, acquisitions?

09:49:47 MR. MANCINI: Objection to form.

09:49:51 THE WITNESS: I'm not directly involved for acquisitions.

09:49:54

09:49:58

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10:02:44 MS. KOHLMANN: Q. From the time you started in 1999 'til three months ago when it became the operating committee, what was the function of the Executive Management Group?

A It's -- it's Eric Schmidt, senior of staff meeting.

Q And how often did the Executive Management Group meet?

A Once a week.

Q And was that an in-person meeting or a telephone conference?

A Primarily in person. Some people travel, sometimes call in.

Q And were agendas prepared for those meetings?

A Yes.

Q And were there sometimes presentations made at the meetings?

A Yes.

Q And if there was an action to be taken at the company, such as a change in policy, was that brought before the Executive Management Group?

MR. MANCINI: Objection to form.

THE WITNESS: Depends how -- how -- if they're important, the discussion of that policy was.

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MS. KOHLMANN: Okay.

Q Who prepared the agenda?

A Typically Eric, and others contributed to items for discussion.

Q Did you, at times, contribute items for discussion?

A Yes.

Q How were the agendas distributed? On e-mail?

A On e-mail.

Q And were notes taken of the EMG meetings?

A Typically it's -- I'm not an official note taker, but typically, you know, you would take notes, depending on your -- your interest, your area.

Q So each individual member --

A Yeah.

Q -- of the EMG took notes?

A Yeah.

Q But there were no notes taken of the meeting that were saved in any particular way?

MR. MANCINI: Objection to characterization.

MS. KOHLMANN: Q. As far as you're aware?

A There -- there were not an official notes, other than, you know, action items from the meeting.

Q And were the action items something that each

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10:04:54 individual prepared or action items were prepared and
10:04:58 came out of the meeting?
10:05:00 MR. MANCINI: Objection to form.
10:05:01 THE WITNESS: What do you mean coming out of
10:05:05 the meeting?
10:05:05 MS. KOHLMANN: Q. When you say action
10:05:06 items --
10:05:06 A Yeah.
10:05:07 Q -- were generally prepared, who prepared the
10:05:09 action items?
10:05:10 A Discussed in the meeting, and Eric's
10:05:12 assistant would then keep track of those.
10:05:16 Q And would Eric's assistant typically e-mail
10:05:19 the action items to the participants in the meeting
10:05:23 after the meeting occurred?
10:05:26 A It would be typically in the next agenda as
10:05:32 a -- as a series of action logs.
10:05:34 Q And where are those agendas kept?
10:05:39 A They -- they -- I assume it was in -- in
10:05:45 e-mail form or in a document that was then printed.
10:05:48 Q So -- so, for example, you would have agendas
10:05:52 in your own e-mail box that you would have received
10:05:55 from any EMG meeting you attended?
10:05:57 A Yes.

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10:05:58 Q It would be an attachment to an e-mail?

10:06:01 A It would be an attachment, or it would be an online document.

10:06:05 Q Okay. And if they were printed, did you ever print out the agendas?

10:06:10 A Yes.

10:06:10 Q And you would bring it to the meeting with you?

10:06:13 A Typically, yes.

10:06:14 Q And what did you -- did you take notes on the agendas sometimes?

10:06:18 A Yes.

10:06:18 Q And you have files in your office for those agendas?

10:06:22 A No.

10:06:22 Q What do you do with the agendas?

10:06:24 A After I speak with my staff, I usually shred them or put them in a shred box.

10:06:31 Q And that's when you -- sorry.

10:06:32 A Then I put them in a shred box, yeah.

10:06:34 Q Okay. That's been your practice for the last several years?

10:06:37 A Yes.

10:06:37 Q Has that been your practice in the last year

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as well?

A Absolutely.

Q Did you receive a litigation hold in connection with this action, Mr. Kordestani?

A Yes.

Q And what did that say?

A That if there are any documents in my office or filing cabinets or disks, computers, that all of that has to be made available.

Q Does the litigation hold refer to any obligation to not destroy documents?

A Yes.

Q What does it say with respect to that?

MR. MANCINI: Objection.

Are -- have we been allowing testimony about the contents of the litigation hold in this case?

MS. KOHLMANN: Yes, I think so. I mean, you can take a position one way or the other. I don't think there's any -- anything privileged about what the litigation hold says, and he's already testified what it said with respect to --

MR. MANCINI: He's -- so I'll -- I'll allow him to answer and preserve the objection.

MS. KOHLMANN: Okay.

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KORDESTANI

You can answer.

THE WITNESS: What's the question again?

MS. KOHLMANN: Q. Did the litigation hold discuss the preservation of documents? Did the litigation hold say anything about just not destroying documents, to your recollection?

A I believe so, and I immediately inform my assistant and IT folks that we're going to collect all the documentation for our legal department, that all of that be done according to the -- that document.

Q But -- but you nevertheless destroyed the agendas for the EMG after you attended meetings?

MR. MANCINI: Objection. I think that's an unfair mischaracterization. He also said --

MS. KOHLMANN: John --

MR. MANCINI: -- he had electronic copies. That's an unfair charac- --

MS. KOHLMANN: -- you are allowed to say objection.

MR. MANCINI: That's unfair.

MS. KOHLMANN: I've allowed you a lot of latitude 'til now. You're coaching the witness.

MR. MANCINI: I'm not.

MS. KOHLMANN: Please just say "Objection."

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KORDESTANI

MR. MANCINI: It is an unfair --

MS. KOHLMANN: It's going to be a long day.

MR. MANCINI: It's an unfair characterization, Susan, of the testimony, and you know it.

MS. KOHLMANN: I don't think so, and the record will speak for itself.

Q So just -- do you have physical files in your office in London, Mr. Kordestani?

A I have filing cab -- I have filing cabinets, but no physical files. I don't take -- I don't like to keep a lot of paper.

Q So the filing cabinets are empty?

A Pretty much.

Q Okay. And you have file cabinets in California?

A Yes.

Q And your assistant maintains whatever files you have in Cal- -- in -- in your office here in Mountain View?

A Yes.

Q And do you -- how do you maintain your e-mails? What system -- first of all, I assume you -- you use Google?

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10:09:27 A Yes.

10:09:27 Q And do you -- is there a -- do you delete e-mails regularly from your in-box?

10:09:34 A Mostly spam, but we use a version of the Google e-mail system that doesn't require a lot of deleting.

10:09:38 Q Why is that?

10:09:51 A It's just easier to search for documents then file or delete.

10:09:51 Q So -- so it's just one big in-box and you can search at -- at will basically and nothing gets deleted?

10:09:52 A Some things get deleted, but -- but mostly I delete spam, as I said.

10:09:57 Q So you would have -- would your -- would there be on your e-mail, for example, e-mails concerning the acquisition of YouTube?

10:10:00 A The -- any -- there -- there are documents related to the YouTube, absolutely.

10:10:03 Q And are there also, for example, documents relating to DoubleClick?

10:10:08 A Yes.

10:10:10 Q Okay. And those e-mails were collected for the purposes of this litigation?

10:10:16

10:10:24

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10:10:37

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KORDESTANI

10:38:09 Q So if an advertiser wants to understand how
10:38:11 to advertise on Google, this explains the process;
10:38:15 isn't that right?
10:38:16 A Yes.
10:38:16 Q And there's -- in addition to AdWords, if you
10:38:32 go to the last page of this document, there is
10:38:35 something called "AdSense"; is that correct?
10:38:38 A Yes.
10:38:39 Q And how does AdSense differ from AdWords?
10:38:45 A AdSense is the program that website owners or
10:38:50 publishers who want to have Google advertisers appear
10:38:55 on their website use, so they earn money by using our
10:38:59 system to have our ads appear on their site.
10:39:03 Q And does Google earn revenue from
10:39:06 contextualized -- contextualized ads on third-party
10:39:12 sites?
10:39:12 MR. MANCINI: Objection to form.
10:39:13 THE WITNESS: Yes.
10:39:14 MS. KOHLMANN: Okay.
10:39:14 Q And how -- how exactly does AdSense work?
10:39:16 Can you describe the process to me?
10:39:18 A It's basically a website identifies an area
10:39:27 on their website where they like to have ads appear,
10:39:30 and ads are either targeted based on keywords, if they

10:39:33 have a search page, or if they have content on their
10:39:38 page, we have a system that identifies relevant ads to
10:39:42 the content on that page.
10:39:44 Q So, for example, if you go to the last page
10:39:46 of this Exhibit 2 that I've put in front of you, in
10:39:54 the middle of page it says, "AdSense for content
10:39:57 automatically crawls the content of your pages and
10:40:00 delivers text and image ads that are relevant to your
10:40:01 audience and your site content."
10:40:03 A Yes.
10:40:03 Q Is that what you were describing, it crawls
10:40:06 the content?
10:40:09 A Yes.
10:40:09 Q And what are the factors that go into an
10:40:21 AdSense for content determination about which ads to
10:40:25 display on a particular site?
10:40:27 MR. MANCINI: Objection to form.
10:40:28 THE WITNESS: What -- what do you mean by
10:40:34 that? What is the question?
10:40:35 MS. KOHLMANN: Q. So how -- what -- if I
10:40:39 understood your testimony, and I understand the last
10:40:42 page of Exhibit 2, there is a crawl of the content
10:40:46 which then generates an ad; correct?
10:40:51 A Is it --

11:36:07 to Google.

11:36:07 Do you recall seeing any documents where

11:36:09 "Yellow" would refer to YouTube and "Green" to

11:36:13 Google --

11:36:13 MR. MANCINI: Objection.

11:36:13 MS. KOHLMANN: Q. -- in the context of the

11:36:14 acquisition by Google of YouTube?

11:36:17 MR. MANCINI: Objection to form.

11:36:18 THE WITNESS: I don't recall the documents,

11:36:20 but I remember the keywords.

11:36:22 MS. KOHLMANN: Okay.

11:36:24 Q So turning to page nine, which is "Key

11:36:28 Yellow," that is revenue -- that is YouTube revenue

11:36:31 assumptions. You see the -- there's a column of "Key

11:36:38 Variable"; do you see that?

11:36:41 A Yes.

11:36:41 Q All the way on the right.

11:36:43 And those variables include "Videos Viewed,"

11:36:47 "Pages Viewed," "Premium Video," High Value

11:36:50 Non-Premium Video," Run of Site Ads," and Sponsored

11:36:54 Ads"; do you see that?

11:36:55 A Uh-huh.

11:36:56 Q And under "Premium Video," do you see -- next

11:36:59 to "Premium Video" there is a column

11:37:05 "Description/2007E Traffic Assumptions"; do you see
11:37:09 that?
11:37:11 A Where is that? Sorry.
11:37:13 Q The -- the -- the second column next to "Key
11:37:15 Variable."
11:37:16 A Yes.
11:37:16 Q You see that?
11:37:17 And under -- for the "Key Variable Premium
11:37:23 Video," you see where it says "60 percent of total
11:37:26 video streams on Yellow website are 'Premium'"?
11:37:29 A Yes.
11:37:29 Q What's your understanding of "Premium"?
11:37:33 MR. MANCINI: Objection to form.
11:37:34 THE WITNESS: I'm not sure what they were
11:37:36 using in this term. I've heard the use of "Premium"
11:37:40 before.
11:37:40 MS. KOHLMANN: Q. What's your understanding
11:37:41 of "Premium"?
11:37:43 A Professional content.
11:37:44 Q And just -- do you have any reason to believe
11:37:52 that that number is incorrect?
11:37:54 MR. MANCINI: Objection; lacks foundation.
11:37:57 THE WITNESS: I -- I have no idea where --
11:37:59 about that --

12:10:49 12. Actually, you know what, let's do this one
12:10:50 first, so 18. Can you give me 12, too? Maybe I'll
12:10:55 just go to this. You got 12? Let's start with that.
12:11:39 Okay. Here you go. Sorry.
12:11:54 MS. WILSON: Thank you.
12:12:20 MR. HAREN: This is 12?
12:12:28 MS. KOHLMANN: Uh-huh.
12:12:29 (Document marked Kordestani Exhibit 8
12:12:33 for identification.)
12:12:44 MS. KOHLMANN: Q. Tell me when you've had a
12:12:44 chance to review it; okay?
12:12:45 A Okay.
12:13:07 Q Okay. Mr. Kordestani, I've marked as
12:13:07 exhibit -- what am I up to?
12:13:09 THE REPORTER: 8.
12:13:16 MS. KOHLMANN: 8.
12:13:17 Q A document, it's an e-mail exchange, and it
12:13:18 bears the Bates No. GOO001-00496651 through 496654,
12:13:22 and this is an e-mail exchange.
12:13:34 First of all, this -- can you briefly
12:13:39 describe this document on the record?
12:13:41 A It's an e-mail exchange between Eric Schmidt,
12:13:43 David Eun, and me.
12:13:47

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12:13:48 Q And you?

12:13:49 A (Witness nods head.)

12:13:49 Q And what's the date?

12:13:51 A It's the 12th of May 2006.

12:13:55 Q And the subject?

12:13:58 A "Video GPS - Content."

12:13:59 Q Okay. And the first-in-time e-mail is an e-mail from David to Eric in which you're copied; is that right?

12:14:14 A Yeah.

12:14:17 Q And it refers to a video GPS that is going to occur some time later; correct?

12:14:26 A Yes.

12:14:26 Q And at this point in time, you may have said this earlier, what was Mr. Eun's duties and responsibilities?

12:14:33 A He was working for me, in charge of content partnerships.

12:14:38 Q And he states here that "The Video team --" would that be the Google Video essentially?

12:14:44 A Yes.

12:14:48 Q "The Video team has focused on two questions in preparation for the GPS: How we 'beat YouTube' in the short term; and 2) how we went over time."

12:14:57

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KORDESTANI

Do you see that?

A Yes.

Q Does that refresh your recollection that Google Video did want to beat YouTube?

A Sure, yes. The team was in charge of video service and felt competitive with YouTube.

Q And in the next paragraph, there's reference to a heated debate about whether, quote, "we should relax enforcement of our copyright policies in an effort to stimulate traffic growth, despite the inevitable damage it would cause to relationships with content owners"; do you see that?

A Yes.

MR. MANCINI: Objection; the document speaks for itself.

MS. KOHLMANN: Q. Do you recall a debate about relaxing the enforcement of copyright policies?

A I don't know how big the debate was, but some people had that opinion.

Q What was your opinion?

A That we -- we need to know the facts, and these are opinions by teams that were under pressure to build a service that works, and they had different theories.

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12:16:01 Q Well, did -- was it -- did you disagree with
12:16:07 Mr. Eun, that -- where he says, "We should beat
12:16:13 YouTube - and all competitors - but not at all costs,"
12:16:16 and "A large part of their," referring to YouTube,
12:16:19 "traffic is from pirated content"?
12:16:27 A I don't --
12:16:27 MR. MANCINI: Objection to form.
12:16:28 THE WITNESS: This -- this -- essentially,
12:16:29 this was their opinions. They didn't have any facts,
12:16:31 and we always believed that it's important to be
12:16:35 comprehensive and also honor copyright holders' rights
12:16:40 so --
12:16:40 MS. KOHLMANN: So --
12:16:42 THE WITNESS: -- it was debating something
12:16:44 without facts and it was just opinions.
12:16:46 MS. KOHLMANN: Q. Well, he goes on in the
12:16:47 next sentence to say, we are comparing our traffic
12:16:50 numbers to their -- theirs. We would acknowledge that
12:16:52 we are comparing our, quote, "legal traffic," close
12:16:55 quote, "to their mix of traffic from legal and illegal
12:16:58 content"; do you see that?
12:16:59 A Yes, I see that.
12:17:00 MR. MANCINI: Objection; the document speaks
12:17:01 for itself.

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KORDESTANI

MS. KOHLMANN: Q. Did you agree with that?

MR. MANCINI: Objection to form.

THE WITNESS: We did not -- if you read later, we believed there was a lot of also just noise in the industry. That's what one senior media executive told me, and there was no fact-based information here. It was opinions.

MS. KOHLMANN: Q. But a media executive would be a potential content owner; correct?

A Yes.

Q And you would listen if a media executive said, as they say here, that they refer to YouTube as a, quote, "Video Grokster"; correct?

A They were also --

MR. MANCINI: Objection to form.

THE WITNESS: Media -- media executives are also doing deals with YouTube at the time, so this is -- again, this was just one opinion here.

MS. KOHLMANN: Q. At the -- at the top of the e-mail, Eric Schmidt says, "While I understand your points and generally agree I don't see a winning strategy from any of the video camps."

Did you have any discussions with Mr. Schmidt about Mr. Eun's e-mail that you recall?

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KORDESTANI

A There were lots of discussions. I don't remember a specific discussion about this e-mail.

Q Yeah, okay.

To your knowledge, did Google Video ever engage in pre-upload review of content?

MR. MANCINI: Objection to form.

THE WITNESS: I was not close enough to -- to know that.

MS. KOHLMANN: Okay. Should have 12? No. I'm sorry. Right.

MR. HAREN: Are you sure you don't have it?

MS. KOHLMANN: Oh, I'm sorry. What number is it?

MR. HAREN: 11.

MS. KOHLMANN: Is it back here? No. I think it's 150, maybe. 11. That one is 11. Actually, 11 is what I should do first. Okay. Is this the next one?

(Document marked Kordestani Exhibit 9 for identification.)

MS. KOHLMANN: I'm going to show you what's been marked as Kordestani Exhibit 9. Have you got it? Okay. Should I -- yeah.

Q Mr. Kordestani, I've handed you a document

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13:52:09 with anyone in particular?

13:52:10 MR. MANCINI: Objection to form.

13:52:13 THE WITNESS: Again, same -- part of the same

13:52:16 updates with David Eun with discussions at these

13:52:19 meetings.

13:52:20 MS. KOHLMANN: Q. And what -- do you

13:52:23 remember any specific conversation with David Eun?

13:52:29 A Again, general conversations about getting

13:52:33 ready for a product review or what happened at the

13:52:35 product review, briefings after meetings.

13:52:38 Q This is about copyright policy in particular,

13:52:40 I'm asking.

13:52:41 A No. One of --

13:52:42 MR. MANCINI: Objection to form.

13:52:43 THE WITNESS: -- copyright policy is one of

13:52:44 many items.

13:52:45 MS. KOHLMANN: Q. But you don't remember, as

13:52:45 you -- I'm trying to -- what I'm trying to determine

13:52:47 is whether you remember, as you sit here today, any

13:52:50 specific conversation -- let's start with Mr. Eun --

13:52:54 with Mr. Eun about copyright policy?

13:52:57 MR. MANCINI: Objection to form.

13:52:58 THE WITNESS: I remember having discussed it,

13:53:00 yes.

13:53:01 MS. KOHLMANN: Q. What do you remember about
13:53:02 those conversations?
13:53:04 A Same kinds of things you pointed to here,
13:53:07 that their theory is that different policy approaches
13:53:13 could result in different success rates in user
13:53:19 activity and adoption of video service.
13:53:22 Q How would you define "success rate"?
13:53:29 A Popularity of the service.
13:53:32 Q Revenue?
13:53:35 A No.
13:53:35 MR. MANCINI: Objection to form.
13:53:36 THE WITNESS: Never discussed revenue in that
13:53:37 context.
13:53:38 MS. KOHLMANN: Q. And how would a different
13:53:40 policy approach affect popularity of the service?
13:53:43 MR. MANCINI: Objection; lacks foundation.
13:53:47 THE WITNESS: It's what you pointed to in the
13:53:49 documents. I'm referring to those same conversations,
13:53:52 the theory that YouTube is different because some
13:53:55 people think there is a different policy to have.
13:54:00 MS. KOHLMANN: Q. Do you -- do you remember
13:54:01 any specific conversation with Mr. Eun about that
13:54:03 topic?
13:54:05 MR. MANCINI: Objection to form.

14:01:35 Q I'm sorry. I didn't hear you.

14:01:36 A It's not significant for Google right now.

14:01:38 Q It's not significant? I can't hear you. I'm sorry.

14:01:42 A It's not a significant revenue contribution to Google right now.

14:01:45 Q Right now? Is that what you said?

14:01:47 A Right.

14:01:48 Q I'm sorry.

14:01:49 What -- but they -- I believe you said it was $40 to $50 million a quarter; correct?

14:01:53 A Right now.

14:01:53 Q How do they generate that revenue?

14:01:56 A Selling advertising on -- on Homepages, on brand channels, experimenting with new formats, just some on partner pages. Not significant enough yet.

14:02:11 Q Okay. Can -- can -- you said Homepages. What other pages do they sell ads on?

14:02:17 A Brand channels they're called, where you make a special page for advertisers, special content.

14:02:24 Q Is the Homepage the same as a search page?

14:02:28 A No.

14:02:28 Q Do they sell advertising on search pages?

14:02:31 A I think we're experimenting with that.

14:02:33 Q What other kind of pages are there?

14:02:38 A Watch Pages.

14:02:39 Q And do they sell advertising on Watch Pages?

14:02:42 A There are some, some advertising sold, and some are sold by partners.

14:02:50 Q Do you know where the majority of -- of the revenue that you have identified, the 40 to 50 million a quarter, comes from with respect to each of these pages?

14:03:01 A I think primarily, I believe, most of it is still Homepages and these brand channels and so forth.

14:03:07 Q Who does the -- who -- do you know who did the financial modeling at the time of the acquisition?

14:03:27 MR. MANCINI: Objection; asked and answered.

14:03:29 THE WITNESS: Probably a combination of our finance team and corporate development team.

14:03:33 MS. KOHLMANN: Q. Would corporate development be you?

14:03:34 A No, David Drummond.

14:03:36 Q David Drummond.

14:03:37 So what part of the acquisition of YouTube did you analyze, if any?

14:03:44 MR. MANCINI: Objection; lacks foundation.

14:03:47 THE WITNESS: Just over -- I just -- as part

15:43:36 mischaracterize of the documents and that is not in
15:43:39 the record. We have not seen that, Susan. You are
15:43:41 offering testimony now by a question that is totally
15:43:43 improper.
15:43:44 MS. KOHLMANN: You can answer.
15:43:45 THE WITNESS: I agree with my attorney. I
15:43:46 never said anything like that. I didn't --
15:43:48 MS. KOHLMANN: I didn't say you did. You
15:43:49 wanna read -- should I repeat the question?
15:43:53 THE WITNESS: I don't know where that comment
15:43:54 comes from.
15:43:55 MS. KOHLMANN: Q. From the documents that
15:43:56 you saw, the term sheets and the signed agreements in
15:44:00 the fall of 2006, there were available fingerprinting
15:44:07 technologies which you did not offer content owners
15:44:12 who had not entered into negotiations; is that --
15:44:15 A I don't agree with that.
15:44:17 MR. MANCINI: Same objections.
15:44:18 MS. KOHLMANN: Q. You had offered it to
15:44:19 content owners?
15:44:20 A I don't know, and now you're asking me
15:44:21 specifics.
15:44:21 MR. MANCINI: Same objections.
15:44:22 MS. KOHLMANN: Q. Who at Google or YouTube